COUNTY OF KAUAI Minutes of Meeting OPEN SESSION

Approved as circulated 12/18/17

				1	1	Approved as circulated 12/18/17
Board/Commission		n:	CHARTER REVIEW COMMISSION	Meeting Date	November 27,	, 2017
Location	Mo'ik	eha Build	ling, Meeting Room 2 A/B	Start of Meeting	g: 4:02 p.m.	End of Meeting: 7:15 p.m.
Present	Chair Jan TenBruggencate; Vice Chair Ricky Watanabe (<i>left at 6:52 p.m.</i>); Members: Virginia Kapali, Carol Suzawa, and Galen Nakamura (<i>entered at 4:05 p.m.</i>) Also: Deputy County Attorney Adam Roversi; Boards & Commissions Office Staff: Administrative Assistant Lani Agoot, Administrator Paula M. Morikami					
Excused	Isaac (Cockett				
Absent						
SUBJE	CT		DISCUSSION			ACTION
Call To O	rder					ncate called the meeting to order h 4 Commissioners present.
Approval Minutes	of	Meeting	Minutes of October 23, 2017			Noved to approve the minutes as Kapali seconded the motion. 4:0.
		Chair To	enBruggencate asked for a motion to receive four (4)		
		commun	nications for the record.			oved to receive four (4) s. Mr. Watanabe seconded the
		Chair To	enbruggencate asked Ms. Suzawa to amend her moti	on to receive		
		seven (7	() communications.			oved to receive seven (7) s. Mr. Watanabe seconded the carried 4:0.
Business			17-05 Proposed Charter Amendment to Remove the als (Article XIV, Subsection 14.12 - 14.14) (deferre			
		Planning public to	enBruggencate asked if anyone in the public objecte g Director Michael Dahilig brief the Commission be estimony to which there were no objections.	fore taking		
		Mr. Dah	nilig stated that in 2016 the Zoning Board of Appeals	S (ZBA) was		

Page 2

SUBJECT	DISCUSSION	ACTION
	established, via Charter Amendment and approved by the Charter Review	
	Commission, in an attempt to try and address a chronic issue with the	
	Planning Commission regarding contested case hearings. He explained that	
	under the Hawai'i Revised Statutes, Chapter 91, any time a matter of due	
	process was handled concerning a discretionary decision by a governmental	
	body, it had to go through a contested case hearing procedure which could	
	happen either by a permitting action or as a consequence of an enforcement	
	action. Mr. Dahilig said the Planning Department, as well as the Planning	
	Commission, had been moving towards a more robust enforcement regime	
	over the past few years relative to things like vacation rentals. Owners of	
	vacation rentals have been playing games with the Planning Department, as	
	well as the Planning Commission, whereby the cost of prolonging	
	administrative litigation had become a business expense for them. He said	
	currently there were approximately twenty-four (24) cases that continued to	
	slowly mitigate their way through the Planning Commission's contested case	
	hearing process, and the concern was the heavy workload for the Commission's docket, as well as the games being played with administrative	
	litigation. He added that Honolulu County, Maui County, and Hawai'i	
	County have ZBAs.	
	County have ZBAs.	
	Mr. Dahilig said once the ZBA was established the Planning Department	
	began drafting rules for the Board and tried to find board members. What	
	became prohibitive was the potential workload and time required to serve	
	on the Board, which could be twenty (20) to twenty-five (25) hours a week.	
	He said the concern with the current Charter Amendment was whether or	
	not it was the right solution to the ever-growing contested case hearing	
	problem that is bogging down the caseload of the Planning Commission.	
	He clarified that it wasn't that the ZBA wasn't necessary, but the reality was	
	that this type of high-level technical work would always, to some degree,	
	need hearings officers, or the equivalent, to be able to move contested case	

Page 3

SUBJECT	DISCUSSION	ACTION
	hearings efficiently.	
	Mr. Dahilig stated that the Charter Review Commission could decide whether or not the ZBA made sense as a way to lessen the load on the Planning Commission, or if there was another way the Planning Commission could handle the growing caseload. He said one thing he wanted to bring to the table was whether or not the duties of the ZBA could be expanded to assume the hearings officer appointment and management roles. He added that the work to maintain and keep a consistent enforcement effort at the county level would always require an investment in some type of adjudication, and bringing that over to a volunteer board would not provide the level of satisfaction and efficiency of the process that the public expects.	
	Commissioner Galen Nakamura entered the meeting at 4:05 p.m.	
	Chair TenBruggencate asked Mr. Dahilig if he had a proposal to modify the existing Charter Amendment to which he replied no, saying that part of the discussion was whether or not the Commission wanted to explore amending the current Charter Amendment because there had been no success in finding people to serve on the ZBA in a timely manner.	
	Ms. Suzawa asked Mr. Dahilig if he was considering proposing an amendment change to the existing contested case process. Mr. Dahilig clarified that the Planning Commission's rules provide for the process, as well as in the way the Charter and Statutes were written. He said it was more an issue of the workload that the Planning Commission carried that had been the driver behind their concerns.	
	Ms. Kapali asked Mr. Dahilig if the Charter Amendment was put on the	

Page 4

SUBJECT	DISCUSSION	ACTION
	ballot in 2016 in response to a large backlog of appeals before the Planning	
	Commission. Mr. Dahilig explained that appeals that dealt with property	
	rights were specialized and involved legal motions. The Planning	
	Commission is coached by the County Attorney to handle things from a	
	permissive standpoint and from a punitive standpoint. He said Hawai'i	
	County separates their contested case hearings because of the amount of	
	education that would be required to have a functioning commission do the	
	work without providing some type of liability for the county. The Planning	
	Commission currently utilizes hearings officers; and the Council	
	appropriates monies to support that. However, over the past four (4) to five	
	(5) years, close to a third of a million dollars was approved for the cost of	
	hearings officers on contested case hearings. Mr. Dahilig said that another issue was that individuals were challenging the credibility of the hearings	
	officers in an effort to hold on to their vacation rentals, which further	
	burdened the Planning Commission. Mr. Dahilig stated that the creation of	
	the ZBA was an attempt to even the load from a fiscal standpoint, as well as	
	a workload standpoint, and not to over burden the volunteer Planning	
	Commission.	
	Mr. Nakamura asked Mr. Dahilig if he had a proposed Charter Amendment	
	to provide for a hearings officer. Mr. Dahilig stated that he was in	
	discussions with legislators in the Interim Housing Committee at the Capital	
	concerning whether or not Chapter 91 needed to be adjusted to try and	
	provide a more timely due process than the current Chapter 91 regime.	
	However, he did feel that a countywide hearings officer was not a far-	
	fetched idea, but was unsure of the Office of the County Attorney's (OCA)	
	preference. Mr. Dahilig added that although vacation rental operators had	
	tried to legally maneuver and play games with the OCA, the OCA had given	
	a yeoman's effort facilitating the due process. Mr. Dahilig stated that a	
	hearings officer position made a degree of sense because by function of	

Page 5

SUBJECT	DISCUSSION	ACTION
	Supreme Court law, there was more need to produce records, which would	
	be more second nature to a licensed attorney than to a seven-member	
	volunteer commission.	
	Chair TenBruggencate called for public testimony.	
	Mr. Ken Taylor stated that it seemed like only a few days ago that he	
	supported Mr. Dahilig's request to establish the ZBA. He said the problem	
	was that the County was very secretive in how they considered people to	
	serve on boards and commissions. With a population of over 70,000	
	people, he couldn't believe there wasn't anyone willing to serve on the ZBA.	
	Mr. Taylor said instead of advertising for positions on boards and commissions in newspapers, the County operated in a small, tight circle for	
	who was invited to be on a board or commission. He said it was	
	disingenuous to eliminate the ZBA until advertising was done to fill the	
	board.	
	Ms. Janee Marie Taylor stated that she was representing the People's Pono	
	Alliance, which was a group of career professionals on Kaua'i skilled in the	
	areas of administration, operations, finance, and beyond. She read their	
	communication regarding the ZBA for the record (on file).	
	Councilmember JoAnn Yukimura stated that she was testifying as an	
	individual councilmember, and that she was in favor of removing the ZBA.	
	She said because the Planning Director said that it was adjudicatory in	
	nature, it was an administrative hearing, and felt the most efficient way to	
	handle the appeals was to have someone who was qualified with a legal	
	degree and background. To try and find seven (7) laypeople and coach them	
	regarding the law and how it was applied didn't make sense to her. She said	
	a hearings officer was the best way to handle the vacation rental appeals.	

Page 6

SUBJECT	DISCUSSION	ACTION
	Ms. Yukimura stated that there were other needs for a hearings officer	
	within the County, and that a full-time hearings officer position was worthy	
	of exploration.	
	Ms. Kapali asked Ms. Yukimura her opinion regarding possible conflicts of	
	interest with a county-paid administrative hearings officer. Ms. Yukimura replied that the State had hearings officers and suggested looking at their	
	process to eliminate conflicts of interest.	
	process to eliminate conflicts of interest.	
	Chair TenBruggencate asked County Attorney Mauna Kea Trask to speak	
	on the agenda item.	
	Mr. Trask said there were Federal and State constitutional rights when	
	dealing with land use entitlements, and property owners were entitled to the	
	utmost due process of the law which was time-consuming. He said in	
	considering a hearings officer, you would have to consider who the	
	appointing authority was and who they would answer to. A hearings officer would need an office, staff, and an attorney. He said the OCA remained	
	committed to finding the best process but that it was going to be expensive.	
	Mr. Trask stated that the OCA has done a lot over the past four (4) years to	
	divide the office and have designated litigators. He said their workflow has	
	slowed because in cutting a couple hundred thousand to a million dollars in	
	special counsel, and taking litigation in-house, the OCA could only allocate	
	six (6) attorneys to advice and counsel; one of the six (6) being largely	
	dedicated to the Department of Water, one to the Police Department. Mr.	
	Trask noted that the Planning Department and Human Resources required a	
	lot of support, and he mostly dealt with the Mayor and Council. He said	
	although workflow had slowed, he felt the OCA had an ethical	
	responsibility to give well-researched answers. Initially, he thought the	
	ZBA could handle cases much like district court; however, because	

Page 7

SUBJECT	DISCUSSION	ACTION
	contested case hearings were constitutional issues, they were very time-consuming.	
	Mr. Lonnie Sykos stated that there had been insufficient resources within the Planning Commission to deal with the TVR issue for a long time. He said the problem he had with repealing the ZBA was what would happened to the due process for people who filed appeals. Mr. Sykos agreed with Mr. Taylor that there were a lot of qualified people on the island to sit on the ZBA, and that the County should expand their efforts to find qualified individuals. He said the reality of the expense of the appeals impacted everyone.	
	Ms. Suzawa commented that if she had to volunteer twenty-five (25) hours a week and she owned a company, she wouldn't volunteer.	
	Chair TenBruggencate said he felt that there was a problem, and the Charter Amendment tried to solve the problem; however, the County Attorney and the Planning Director said they were in the process of looking at other options. He said he didn't want to create two (2) separate Charter Amendments because it would clutter the ballot, and preferred changing the existing amendment to address the issues. Chair TenBruggencate suggested the item be deferred and asked for a motion.	Mr. Nakamura moved to defer CRC 2017-05. Mr. Watanabe seconded the motion. Motion
	CPC 2017-06 Proposed Charter Amendment to Amend Article VIII	carried 5:0.
	CRC 2017-06 Proposed Charter Amendment to Amend Article XIII Relating to the Department of Public Works, Sections 13.01 - 13.03 by changing title from County Engineer to Director of Public Works, and changing job description to reflect title change (deferred 10/23/17)	

Page 8

SUBJECT	DISCUSSION	ACTION
	Chair TenBruggencate stated that a letter was sent to the former County	
	Engineer Larry Dill requesting his attendance; however, didn't see him in	
	the audience. The Commission also received a letter from the Director of	
	Human Resources Janine Rapozo, who proposed the amendment, stating	
	that she was unable to attend the meeting. Chair TenBruggencate said he	
	would ask for a deferral so that Ms. Rapozo could be present, but would	
	allow public testimony.	
	Ms. Taylor read written testimony into the record (on file).	
	Mr. Watanabe stated that the County had numerous qualified and licensed	
	engineers. He said the question was whether the title change would reduce	
	the responsibility of the County Engineer.	
	Councilmember Mel Rapozo stated that he was speaking as a citizen and	
	individual councilmember. His concern was regarding the timing of the	
	proposed amendment because the Mayor had one (1) year left on his term,	
	and the change wouldn't take effect until the next election. He said he was	
	against the proposed amendment because the County Engineer should be a	
	licensed engineer, and that he didn't agree that the position was historically	
	hard to fill. Mr. Rapozo provided that in 2016 the County advertised for the	
	positon in the Garden Island for one (1) week, the Star Advertiser for one	
	(1) day, and was posted on the County website; but did not advertise on the	
	nationwide government job system Neo.gov, in the Pacific Business News,	
	or in any other publication. He said the County wanted to find the people	
	they wanted versus the most qualified, and they were lowering the standards	
	of the position in order to do that. Mr. Rapozo stated that in 2016 when Mr.	
	Dill left the County, the Mayor made it clear during the budget session that	
	he did not intend to fill the position because he only had two (2) years left	
	on his term, and felt he could do the job with existing personnel. Mr.	

Page 9

SUBJECT	DISCUSSION	ACTION
	Rapozo said he, along with other councilmembers, questioned the Mayor's	
	decision and were notified that the Mayor had reconsidered and was going	
	to solicit for the position. He added that the County Council's efforts to fill	
	the Auditor's position were extensive and costly, and he was satisfied with	
	their efforts; however, he was not satisfied with the efforts by the	
	Administration to fill the County Engineer position.	
	Hawai'i State Department of Transportation Engineering Program Manager	
	Lawrence Dill entered the meeting at 4:35 p.m.	
	Mr. Dennis Esaki stated that he was against the proposed Charter	
	Amendment removing the professional Engineer's license requirement;	
	however, he was not against anyone that the change would affect. He said	
	others who deal with the Engineering Division agree with him but are afraid	
	to testify due to possible retaliation. He said salary was not the only factor in filling the position, nor was it the key factor. The Mayor and Managing	
	Director positions don't require licenses, and the proposed change would	
	only add another layer without a license. He said the position might become	
	a political one, like the State, whose department heads were appointed by	
	virtue of political payoff and not qualifications. He added that the proposed	
	change would be a disservice to the residents and taxpayers of Kaua'i.	
	Ms. Yukimura stated that she was speaking as an individual	
	councilmember. As a former mayor, she said it was very difficult to find a	
	qualified engineer. She said at that time, she broadly advertised for the	
	position and hired a highly qualified engineer from Los Alamos	
	Laboratories. Ms. Yukimura said she felt the County Engineer position was	
	where highly technical expertise and management perspective came together, and didn't think you could rely on lower-level engineers to make	
	final decisions. She stated that she was against removing the license	
	mai decisions. The stated that she was against removing the needse	

Page 10

SUBJECT	DISCUSSION	ACTION
	requirement; however, it was difficult to find a qualified engineer due to the variation between the private sector and the County's salary levels. She added that it would be great to find a way to address the issue on a case-by-case basis based on the existing economic situation. However, she didn't think it was worth sacrificing the needed capabilities of the County Engineer just for the sake of filling the position.	
	Mr. Nakamura asked Ms. Yukimura how she felt about adding managerial experience to the requirement for the position to which she replied that although the existing position required a certain amount of experience in an administrative capacity, it was more difficult to measure than whether someone had a degree or not. She said that the County Council used an executive firm in their search for a County Auditor, and felt that was a good way to fill a position.	
	Mr. Taylor stated that he was opposed to the proposed Charter Amendment, saying that the Public Works Department was the largest department in the County and the change would lower the bar. He agreed that it was difficult to find qualified engineers; however, he did not feel that the County advertised for the position as much as they could have. Mr. Taylor stated that the County should be looking to move forward, not backwards, which is what the change would do. He said when the County hired Larry Dill; it was a great move forward to have an engineer with his knowledge and ability.	
	Chair TenBruggencate asked Hawai'i State Department of Transportation Engineering Program Manager Lawrence Dill to speak on the proposed Charter Amendment.	
	Mr. Dill stated that initially he grudgingly supported the proposed	

Page 11

SUBJECT	DISCUSSION	ACTION
	amendment because of the difficulties with filling the position. However,	
	he didn't think the current situation was representative of the County's	
	history as far as filling the position, and felt the proposal could be a knee-	
	jerk response to the current situation. He said there was more to the	
	position than the technical aspect such as administration, personnel,	
	negotiations, and political issues on any given day, but the technical aspect was the most important. He said having a PE (Professional Engineer)	
	license was a good determination that the individual was qualified for the	
	position. Mr. Dill stated that it was a good idea to keep the license	
	requirement for the County Engineer position.	
	Ms. Kapali stated that it was clear that the Charter says "shall be a	
	registered engineer", and that the County Engineer was responsible for the	
	administration of the Public Works Department. She said strong	
	management experience was needed in the position, and that many large	
	corporations hired their technical support. She agreed with Ms. Yukimura and Mr. Dill that individuals who applied for the position needed a number	
	of years of experience in engineering, whether they were registered or not,	
	with a strong foundation in management. Ms. Kapali suggested that the job	
	description for the County Engineer position be modified to provide a	
	certain number of years of management training and experience to qualify	
	for the position. She said in all the years she was with the County, there	
	were gaps when the County couldn't fill certain positions simply because	
	someone didn't have a license, but they were great administrators and had	
	technical skills.	
	Mr. Dill agreed with Ms. Kapali, saying that rather than removing the PE	
	requirement, a consideration would be to add the experience in public	
	administration to the position. He said he recognized the challenges in	
	finding the right person and would hate to do anything that would lower the	

Page 12

SUBJECT	DISCUSSION	ACTION
	bar for the County Engineer position.	
	Mr. Sykos stated that the County needed a licensed engineer, and the arguments against having a licensed engineer didn't make any sense. He said over the last fourteen (14) years, he had attended meetings and seen all the money the County wasted doing things inappropriately and not accomplishing what they tried to do, like road resurfacing. Mr. Glenn Mickens said when Mr. Dill was the County Engineer; he turned things around for the County. He said it was important that the County hired the right person; anyone could go to school, get a degree, and not be qualified for the position. He suggested that the County might have to raise the salary of the County Engineer position to attract qualified individuals.	
	Mr. Esaki clarified that a registered engineer was the same as a licensed engineer.	
	Chair TenBruggencate stated that Human Resources Director Janine Rapozo proposed the Charter Amendment but wasn't able to attend the meeting and asked to defer the item.	Mr. Nakamura moved to defer CRC 2017-06. Mr. Watanabe seconded the motion. Motion carried 5:0.
	CRC 2017-07 Proposed Charter Amendment to Remove Article XXXII	
	relating the County Auditor (deferred 10/23/17)	
	Chair TenBruggencate asked if anyone from the Administration wanted to speak on the matter. Seeing none, he called on Council Chair Mel Rapozo.	
	Mr. Rapozo asked if the Charter Amendment was proposed by the	

Page 13

SUBJECT	DISCUSSION	ACTION
	Administration to which Chair TenBruggencate clarified that it was	
	proposed by a member of the Charter Review Commission. Mr. Rapozo	
	provided a brief history of the Council's solicitation process for the County	
	Clerk, saying that they were going through the same process to fill the	
	County Auditor position. Through that process, thirty-five (35) names were	
	generated, resulting in twenty-eight (28) qualified applicants. He said two	
	(2) job offers were made, both were declined, and the position remained	
	vacant. He said that because the Council was in the process of filling the	
	position and had spent a considerable amount of money on an executive	
	recruitment firm, they would like to complete their process. He said the	
	application deadline was January 2018, and they hoped to have an auditor in place by April 15, 2018. Mr. Rapozo stated that if the Council was unable	
	to fill the position by that time, they would likely introduce a proposed	
	Charter Amendment to remove the County Auditor position. He added that	
	the cost of the County Auditor's Office (CAO) was being considered as	
	well, and that he didn't think a properly run office would cost as much as the	
	previous Auditor's Office, which was over one million dollars. Mr. Rapozo	
	stated that he would rather have an independent audit function than have the	
	Council decide who would be audited.	
	Councilmember Arryl Kaneshiro stated that as the Council Budget and	
	Finance Chair, he had looked at the cost of the CAO, as well as the cost of	
	independent audits. He said the question was whether it was more cost-	
	effective to have a CAO, or contract out the audits. Ms. Suzawa asked if	
	the Council was satisfied with the results of the audits they had received to	
	which Mr. Kaneshiro said that he was pleased with the in-house and the	
	contracted audits. Ms. Kapali stated that the County historically contracted	
	out their audits and asked why the County went to an internal audit system.	
	Mr. Kaneshiro said he didn't know and referred the question to Mr. Rapozo.	

Page 14

SUBJECT	DISCUSSION	ACTION
	Mr. Rapozo explained that as a councilmember in 2002, he requested a	
	number of audits but was unable to secure the votes to pass them. At that	
	time, Council Chair Furfaro was successful in getting a proposed a Charter	
	Amendment passed to create the CAO to alleviate the pressure on	
	councilmembers having to ask for audits. Mr. Rapozo stated that his	
	concern was using the Charter to secure positions in the County, like the	
	earlier discussion about creating a hearings officer position via Charter	
	Amendment. He said he felt the ability and authority to create positions in	
	the County was with the Administration or the Council; the Charter was	
	designed to create County structure. Mr. Nakamura asked Mr. Rapozo if the	
	Auditor took direction from the Council or individual councilmembers	
	regarding what audits were conducted. Mr. Rapozo explained that although	
	in the past there had been issues with the process, the Auditor was tasked to create an audit plan with input from the Council and the community, and	
	submit it to Council as information only, not for approval. If the Council	
	wanted an audit conducted, they could draft a resolution which had to be	
	voted on by the Council and backed by funds to pay for the audit. He said	
	the process was designed to be independent from the Council and the	
	Administration.	
	Councilmember Derek Kawakami stated that during the budget session, he	
	was the first one to question the efficiency of creating the CAO. He said his	
	opinion was his opinion, and felt that voters should have the opportunity to	
	revisit the necessity of having the CAO. He agreed with the previous two	
	(2) speakers regarding fiscal responsibility and said this was an opportunity	
	to give the voters knowledge behind the cost of the CAO. Mr. Kawakami	
	said people initially thought the CAO was a good idea that would create a	
	more efficient government. Coming from the private sector, he viewed	
	audits as a tool for efficiency and welcomed audits. He said that was the	
	kind of culture needed in government to be successful, and that some	

Page 15

SUBJECT	DISCUSSION	ACTION
	people's opinions were that government was inefficient. Mr. Kawakami	
	stated that he was open to sending the proposed Charter Amendment to the	
	voters because it was not very often that an office was vacant and an	
	opportunity was presented to revisit the necessity and cost-effectiveness of	
	the office. In response to Ms. Suzawa's question regarding whether or not the Council was satisfied with previous audits, he said personally he was	
	not. What he was satisfied with was the Department of Transportation's	
	Short Range Transportation Plan, completed by a hired consultant that	
	pinpointed efficiencies and areas for improvement. He added that he was	
	open to that process in the future.	
	Councilmember Mason Chock stated that he was testifying as an individual	
	and requested that the County Council be allowed to complete their	
	recruitment process and follow through on their commitment to the people	
	of Kaua'i to find the most qualified individual for the County Auditor	
	position. He said if they were unsuccessful within their timeframe, the	
	Council had discussed a Charter Amendment to put the vote before the	
	people of Kaua'i. He added that a lot had been learned throughout the process, and felt there were some positive aspects to retaining the CAO.	
	Mr. Chock stated that he was satisfied with their outside audits, and that an	
	objective, independent office that took the approach of following though, in	
	the sense of continuous learning and improvement, was the right approach.	
	He agreed with the previous speakers that the CAO wouldn't cost as much	
	as it had in the past if the right people were in place. Finding the right,	
	qualified individual was difficult; however, he felt an executive search may	
	provide that opportunity.	
	Ms. Kapali stated the Office of Boards and Commissions provided that	
	proposed Charter Amendments needed to be ready by June of 2018, and	
	asked Mr. Chock if the Council's process would be complete by March or	

Page 16

SUBJECT	DISCUSSION	ACTION
	April of 2018. Mr. Chock said the Council was having that conversation	
	now and could provide updates to the Commission in January.	
	Chair TenBruggencate commented that if the Commission were to pass the proposed amendment, it would confound the Council's ability to find an	
	auditor.	
	additor.	
	Ms. Yukimura, speaking as an individual councilmember wanted to see the	
	Council's recruitment process completed. She said she was in favor of an	
	independent internal auditor because of the need for good risk management,	
	and that effective government was what the people of Kaua'i wanted. Ms.	
	Yukimura stated that the high costs of the previous CAO were partly due to the auditor that was in place, and that the office could be streamlined and	
	more helpful to the County and its department heads with the right person in	
	the position.	
	Ms. Taylor read her written testimony on behalf of the People's Pono	
	Alliance into the record (on file).	
	Mr. Watanabe clarified that the Office of the County Clerk was the	
	legislative branch, not the judicial branch.	
	Mr. Mickens read his written testimony into the record (on file).	
	Ma Norma Doctor Sparks stated that she was concerned about the attempt	
	Ms. Norma Doctor Sparks stated that she was concerned about the attempt to remove the County Auditor position from the Charter and felt	
	independence was needed. She said as an administrator in California and	
	Hawai'i, she was audited many times and was often discouraged because	
	she felt she was being unduly criticized. However, throughout that process,	
	the agencies that she directed did improve and began to understand what	

Page 17

SUBJECT	DISCUSSION	ACTION
	was important to the public. Ms. Sparks stated that the people of Kaua'i	
	wanted the CAO, and although recruitment might be difficult, that should	
	not be a reason to eliminate the CAO. She agreed with previous speakers	
	that the cost of the CAO should be considered; however, the cost of the office could change dramatically depending on who designed the office.	
	office could change dramatically depending on who designed the office.	
	Mr. Taylor read his written testimony into the record (on file). He pointed	
	out the benefits the County received from previous audits by the former	
	County Auditor. He said earlier discussions focused on the cost of audits,	
	not the cost benefits from those audits. Mr. Taylor stated that he was in	
	favor of keeping the CAO, and that the County needed to buckle down and	
	understand where monies were being spent. He agreed that it was difficult to fill the position and that the County Council had done a good job in their	
	recruitment efforts.	
	Mr. Sykos said he disagreed with earlier statements made that the Auditor	
	chose which audits to perform. He said the Auditor didn't choose what to	
	audit and he referred to a document called <i>The Yellow Book</i> which provided	
	guidance for small government operations and their audits. He said the	
	value of having an independent auditor was that it eliminated political	
	interference that prevented the public from discovering how the County's	
	money was spent. Mr. Sykos stated that the biggest problem in hiring an auditor was the mistreatment of the previous auditor, and that the County	
	could hire anyone they wanted.	
	costa into anyone they maneed.	
	The Commission recessed at 6:01 p.m.	
	The Commission reconvened at 6:06 p.m.	
	Chair TenBruggencate clarified that the business before the Commission	
	was to make a decision on the item and asked for the Commission's	

Page 18

SUBJECT	DISCUSSION	ACTION
	preference.	
	Mr. Nakamura suggested the item be deferred to March 2018 based on the requests by Councilmember Yukimura and Council Chair Rapozo.	
	Chair TenBruggencate said he thought the Council provided their decision would be in April of 2018.	
	Mr. Nakamura said April was fine and asked that Council Chair Rapozo report back to the Commission with an update.	
	Chair TenBruggencate asked Mr. Nakamura if he was making a motion to defer to which Mr. Nakamura said yes.	Mr. Nakamura moved to defer CRC 2017-07 to April 2018, with a request that Council Chair Rapozo be present with a report from the County Council. Ms. Suzawa seconded the motion for discussion.
	Chair TenBruggencate clarified that there could be no discussion following a motion to defer. He said the Commission's options were to vote for the motion to defer and continue their discussion.	
	Chair TenBruggencate asked for a roll call vote:	Commissioner Nakamura - Aye; Commissioner Kapali - Nay; Commissioner Suzawa - Aye; Vice Chair Watanabe - Nay; Chair TenBruggencate - Nay. Motion failed 2:3.
		Ms. Kapali moved to reject CRC 2017-07 relating to the County Auditor. Mr. Watanabe seconded the motion.
	Ms. Kapali said after listening to all that had been said, she saw that there	

Page 19

SUBJECT	DISCUSSION	ACTION
	was a lot of history regarding the County Auditor, and that the County needed to be accountable for their operations. She said she wasn't sure it took an internal auditor, but felt the County was going in the right direction to reach the overall goal of an efficient and effective government. Ms. Kapali said she didn't feel a deferral gave the County Council enough time to complete their process and get an office in operation.	
	Chair TenBruggencate stated that it was the Charter Review Commission's responsibility to review issues. There had been a combative relationship involving the previous auditor, and the position had been vacant for some time. He said the County Council was considering proposing a Charter Amendment to remove the County Auditor if they were unsuccessful in filling the position, and he didn't think the Commission should interfere with their process. Chair TenBruggencate stated that he would support the motion on the floor. With no further discussion, Chair TenBruggencate asked for a roll call vote.	Commissioner Nakamura - Aye; Commissioner Kapali - Aye; Commissioner Suzawa - Aye; Vice Chair Watanabe - Aye; Chair TenBruggencate - Aye. Motion carried 5:0.
	CRC 2017-08 Proposed Charter Amendment to Amend Article XIX,	
	Financial Procedures, Section 19.15 (C) by adding language to include corresponding maintenance of those lands or property entitlements	
	Chair TenBruggencate stated that Deputy Planning Director Kaaina Hull, assigned to the Open Space Commission, was not in attendance and asked for the item to be deferred after taking public testimony. With no public testimony, Chair TenBruggencate asked for a motion to defer.	Mr. Watanabe moved to defer CRC 2017-08. Mr. Nakamura seconded the motion. Motion carried

Page 20

SUBJECT	DISCUSSION	ACTION
		5:0.
	CRC 2017-09 Proposed Charter Amendment Establishing Council	
	Districting	
	Chair TenBruggencate stated that the amendment was proposed by a	
	Commissioner and called for public testimony.	
	Mr. Taylor stated that he had concerns with Council districts, saying the	
	problem was that a councilmember had only one (1) vote, and if he wanted	
	to get anything accomplished in his district, he would have to solicit other	
	districts, which didn't make for good government. He added that it would	
	take away his democratic process of being able to vote for councilmembers,	
	and that every ten (10) years when a census is done, districts would need to	
	be reevaluated in order retain equal populations within each district.	
	Mr. Sykos stated that he was opposed to Council districting because it	
	would alienate communities from one another, the current system worked,	
	and he didn't see the point in changing it.	
	Mr. Mickens agreed with Mr. Sykos, saying if it wasn't broken, don't fix it.	
	ivii. iviickens agreed with ivii. Sykos, saying ii it wasii t broken, don't iix it.	
	Ms. Felicia Cowden said she was from the North Shore and felt they were	
	underrepresented. However, she didn't think Council districting was a good	
	idea and she was glad she could vote for all seven (7) councilmembers.	
	, ,	
	Chair TenBruggencate asked Ms. Kapali to speak on her proposed	
	amendment.	
	Ms. Kapali thanked the public for their input and agreed with their	
	comments. She provided that the reason she proposed the amendment was	

Page 21

SUBJECT	DISCUSSION	ACTION
	for the purpose of discussion. Since 1982, Council districting was	
	considered four (4) times; twice by the County Council and twice by the	
	Charter Review Commission. Ms. Kapali said this wasn't a new discussion	
	but Kaua'i was new and she wanted to see the younger adult population be more civic-minded. She said because young adults were busy with work	
	and raising children, Council districting may provide them the opportunity	
	to represent their own districts which would be smaller, more manageable,	
	and they would be more sensitive to the issues in their area.	
	Mr. Nakamura shared an idea from the late John Isobe whereby there would be three (3) district councilmembers using the State Representative's line, and four (4) at-large councilmembers.	
	Ms. Suzawa shared that during the six (6) years she was on the Charter Review Commission, the proposal came up at every election. She said she felt Kaua'i was small enough to manage, and she preferred to vote for all seven (7) councilmembers.	
	Mr. Watanabe agreed with Ms. Suzawa.	
	Chair TenBruggencate stated that there was no specific proposal for the amendment and suggested the Commission receive the item with the understanding that if a proposal was presented to the Commission in the future, they could revisit the issue.	Mr. Nakamura moved to receive CRC 2017-09. Mr. Watanabe seconded the motion. Motion carried 5:0.
	CRC 2017-10 Proposed Charter Amendment to Article III, County Council,	
	Section 3.03 relating to terms	
	1. Councilmembers serve two (2) four-year terms beginning with the	

Page 22

SUBJECT	DISCUSSION	ACTION
	2020 election year	
	2. Four (4) Councilmembers serve two (2) four-year terms full time	
	(staggered), and three (3) Councilmembers serve two (2) two-year	
	terms part time	
	Chair TenBruggencate asked Ms. Cowden to speak on her proposed	
	amendment.	
	Ms. Cowden reviewed her proposed amendment handout with the	
	Commission (on file), highlighting a section she added which stated that "a	
	basic proficiency test of math, literacy, understanding of a budget, and	
	functions of a county government is necessary for the full time position."	
	She said it was necessary to have councilmembers with the skill set to do the job effectively.	
	Ms. Suzawa said Ms. Cowden's proposal had possibilities. She questioned	
	the legality of the "full-time" requirement, saying that she didn't think the	
	Charter could be restrictive. Ms. Cowden responded that it was up to the	
	Charter Review Commission to vet the proposed amendment.	
	Chair TenBruggencate asked Ms. Cowden whether or not she had	
	considered who would develop and administer a proficiency test to which	
	Ms. Cowden said she hadn't made that determination. Chair	
	TenBruggencate asked Ms. Cowden if she was concerned that a single	
	legislative body with two- and four-year terms would create a class	
	distinction within the body and hinder its efficiency. Ms. Cowden provided	
	that there was nothing that weighted the vote of any one person, nor were	
	there any limitations. Chair TenBruggencate asked Ms. Cowden how she	
	saw the ballot question set up to which she explained that all candidates	
	would be on the same ballot and the top four (4) candidates would get the	

Page 23

SUBJECT	DISCUSSION	ACTION
	four-year full-time terms, and the next three (3) would get the two-year part-time terms. Chair TenBruggencate clarified that candidates wouldn't be able to run for specific terms to which Ms. Cowden said that it could be set up that way as well; however, it would be a problem if no one wanted a four-year full-time term.	
	Chair TenBruggencate called for public testimony.	
	Mr. Taylor stated that he was in favor of four-year terms if they were staggered; four (4) and three (3). However, he was opposed to Option No. 2. He stated that many communities across the country that were larger than Kaua'i had five-member councils and suggested Kaua'i look at that option as a way to reduce costs.	
	Mr. Sykos said he appreciated all that Ms. Cowden did for the community; however, he did not agree with her proposal. He didn't want a professional politician running the County, State, or the Nation. He said you couldn't pass legislation to make people act ethically, and that the problem was not the term length but the County's bad administration and civil servants. Mr. Sykos said mixed terms was confusing and you couldn't have tests; only age, residency, and citizenship per the Constitution.	
	Mr. Watanabe left the meeting at 6:52 p.m.	
	Chair TenBruggencate called for any additional public testimony to which there was none.	
	Chair TenBruggencate asked Ms. Kapali to speak on her proposed Council terms, Item No. 1.	

Page 24

SUBJECT	DISCUSSION	ACTION
	Ms. Kapali stated that four-year terms would provide stability for	
	councilmembers and it was time to try different things that might help the	
	County be more efficient.	
	Chair TenBruggencate asked the Commission for their preference on Proposal No. 2.	Mr. Nakamura moved to defer CRC 2017-10 (2). Ms. Suzawa seconded the motion. Motion carried 4:0.
	Chair TenBruggencate suggested the Commission receive Item No.1 for the record.	Mr. Nakamura moved to receive CRC 2017-10 (1). Ms. Suzawa seconded the motion. Motion carried 4:0.
	CRC 2017-11 Proposed Charter Amendment creating a new Farm	
	Commission	
	Ms. Cowden reviewed her proposed amendment handout with the	
	Commission (on file). She said the goal would be to assist the County	
	Planning Department and Office of Economic Development with details	
	specific to managing the nuances of farming permits, planning, and violations. The Farm Commission would be a cross-section of agriculture	
	and food production. She said there has been farming issues, pesticide	
	issues, and farmworker housing issues on Kaua'i, and the Farm	
	Commission would be a place farmers could receive guidance on all things related to farming.	
	Ms. Kapali stated that she would move to defer the item and asked to have a	
	representative from the Kaua'i Farm Bureau present for information	
	purposes. Ms. Cowden asked to include a representative from the Hawai'i	
	Farmers Union United. Chair TenBruggencate suggested inviting the	
	Department of Housing, Office of Economic Development, and the Director	

Page 25

SUBJECT	DISCUSSION	ACTION
	of Planning.	
	Chair TenBruggencate called for public testimony.	
	Mr. Taylor stated that he was in favor of promoting agriculture and that it was a shame that Kaua'i imported as much food as they do when there were growing conditions that allowed more food production on-island. He said there was a number of farm organizations on-island and he felt the Office of Economic Development should work with them to promote agricultural activities and increase food production. Mr. Taylor said he didn't feel a Farm Commission was a County function.	
	Mr. Sykos said he appreciated what Ms. Cowden was doing; however, as a farmer, his greatest challenge was getting other farmers to reach a consensus on anything. One of the problems the farming community had was long-term access to land and water. He said members of the industry tended to have philosophical and political positions and didn't want to compromise. Mr. Sykos added that farmworker housing was not only regulated by the Department of Housing and Urban Development and the Federal Housing Authority, but also by the Department of Agriculture which has completely separate farm housing regulations. He said he supported promoting agriculture, but the County didn't need another commission. Mr. Sykos stated that Kaua'i lacked leadership in the area of agricultural development, and creating a Farm Commission was not the right solution.	
	Ms. Taylor stated that she was speaking as an individual on agriculture, and that her opinion was that organic farming was not highly considered by the government bodies throughout the islands. She said she was in favor of the proposal because it was an attempt to create something that supported farmers on Kaua'i, and that there were many qualified people on-island	

Page 26

SUBJECT	DISCUSSION	ACTION
	there were interested in farming.	
	Chair TenBruggencate asked the Commission if they wanted to invite the individuals as discussed to the next meeting.	Mr. Nakamura moved to defer CRC 2017-11 and invite the Director of Planning, Director of Housing, Director of Economic Development, County Farm Bureau President, and Hawai'i Farmers Union United - Kaua'i Chapter President to the next meeting. Ms. Kapali seconded the motion. Motion carried 4:0.
	Chair TenBruggencate recommended the Executive Session and CRC 2017-12 Election of Chair and Vice Chair be deferred to the next meeting.	Mr. Nakamura moved to defer the Executive Session and CRC 2017-12 to the next meeting. Ms. Suzawa seconded the motion. Motion carried 4:0.
Announcements	Next Meeting: Monday, December 18, 2017, 4:00 p.m., in the Mo'ikeha Building, Liquor Conference Room 3	
Adjournment		Chair TenBruggencate adjourned the meeting at 7:15 p.m.

Submitted by:	Reviewed and Approved by:
Lani Agoot, Administrative Specialist	Jan TenBruggencate, Chair
() Approved as circulated.() Approved with amendments. See minutes of	_ meeting.